

making good the deficiency in the trust fund occasioned by the abstraction of the bank stock, to the relief of Mrs. Jones also to that extent. The banks, according to the true construction of the opinion of the Court of Appeals, as contended for in the third and fifth exceptions of Stockett, can only be discharged from their responsibility by satisfaction actually made by Wayman and Mrs. Jones, as to the extent of their liabilities. They are also responsible each for the whole amount ascertained in Stockett's first exception. These views appear to dispose of all the disputed points on the exceptions, and an order may be drawn accordingly, and referring the case again to the Auditor, to make the necessary alterations in the accounts.

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[The preceding opinion was delivered on the 2d of June, 1850, after which the cause again came before the court upon further exceptions to the Auditor's report and accounts, when the following opinion was delivered by the Judge, on the 18th of July, 1850.]

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#### OPINION BY JUDGE BREWER:

This case comes up again on exceptions to the Auditor's report of June 20th, 1850, and some of the former exceptions not acted upon. The exception of Stockett, and the first exception of Wayman, are ruled good in part only. That portion of the former order of June 2d, which would charge Wayman, being founded in error as to the fact. The Auditor's report of the 2d of February, 1831, and the trustee's report of the 23d of June, 1830, which would have shown the error, were not among the papers selected and sent to the court, and the Judge relied on the information of the counsel, who were also misled. The fact is now admitted, that Wayman purchased from Jones twenty-seven instead of seventeen shares of Farmers and Merchants Bank stock, and that the purchase was sanctioned by the court. Of course, he is not to be charged with any loss on that amount of stock by depreciation, but is to be charged with the loss on the seven shares now agreed to be taken as an investment at the former selling price. Wayman will, of course, be credited with these seven shares.